

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 3-1-2004 passed by the Sub-Divisional Magistrate, Jalore (for short, "the Executive Magistrate" hereinafter) in Criminal Case No.1/2003, whereby the Executive Magistrate dismissed the application dated 30-6-2003 filed by the petitioners and the application dated 18-7-2003 filed by the non-petitioners No.2 and 3 and directed that the land in dispute shall remain under attachment until a competent Court determines the rights of the parties with

regard to the person entitled for the possession thereof.

I have heard learned counsel for the parties. Perused the order impugned as also the material on record.

Proceedings under Sections 145 and 146 of the Code were initiated on the complaint filed by the Station House Officer, Police Station, Ahore, district Jalore in respect of the land bearing Khasra No. 1290-1295 measuring 14.50 hectares. The disputed land is recorded in the name of Bera Ladka Doli Banam Mandir Sri Gopalji. Thus, the land is recorded in the name of deity, which is a perpetual minor. Both the parties want to take possession over the land and apprehending breach of peace in relation to possession of the land in dispute, the complaint was filed. A preliminary order under Section 145 (1) of the Code was drawn by the Executive Magistrate prima facie satisfying that there is likelihood of breach of peace with regard to the possession over the land in dispute. Considering the emergent situation, the land was attached and a Receiver was appointed by the Executive Magistrate.

With regard to the land in dispute, various litigations, including the order challenging the attachment of the land before the Sessions Judge, Jalore, a revision petition and thereafter a criminal miscellaneous petition before this Court bearing No.202/1994 were filed, wherein this Court, while disposing of the criminal miscellaneous petition, directed that the Magistrate,

before whom the proceedings are pending, shall decide the matter finally within the period of four months from the date of placing before him the copy of the order. Both the parties were directed to appear before the Magistrate on 26.2.1999.

It appears that some settlement was arrived at between the parties and as per the settlement, both the parties filed a compromise before the Executive Magistrate stating therein that particular share of the land be given to party No.1 and other to the party No.2, i.e. the party No.1 Basti Ram and others to get 2/3 share of the land and party No.2 Sita Ram and others to get 1/3 share of the land and requested the Executive Magistrate to release the land from attachment and the Receiver be directed to hand over the possession of the land which was attached by the Executive Magistrate in proportion to their share, i.e. 2/3 to party No.1 Basti Ram and others and 1/3 to party No.2 Sita Ram and others. The Executive Magistrate, noticing that the land in question is recorded in the name of deity i.e. Bera Ladka Doli Banam Mandir Sri Gopalji, the deity is perpetual minor and the land of deity cannot be given to party No.1 and party No.2 merely because they arrived at a settlement, refused to accept the application and directed that the land in dispute shall remain under attachment till the parties get their rights determined from the competent court.

Sub-section (1) of Section 146 of the Code provides

that if the magistrate decides that none of the parties was then in such possession as if referred to in Section 145 or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of the dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

Keeping in view the facts and circumstances of the case and more particularly the fact that the land in dispute is recorded in the name of the deity which is a perpetual minor, the Executive Magistrate was justified in directing the parties to approach a civil court and get their rights determined and until the rights of the parties are determined by the competent civil court, the land shall remain under attachment. The impugned order cannot be said to be erroneous. It cannot be said that the impugned order would result in serious miscarriage of justice.

Consequently, the criminal miscellaneous petition is dismissed.

(H.R. PANWAR), J.

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